BIR Issuances- Revenue Memorandum Order

Revenue Memorandum Order 32-2016 – Further Clarifying and Amending Certain Policies, Guidelines, and Procedures in the Issuance of Importer/Broker Clearance Certificates Relative to the Accreditation as Importer /Customs Broker, Prescribed under Revenue Memorandum Order No. 10-2014, as amended by RMO Nos. 33-2014 and 1-2015

This RMO clarifies the guidelines in securing, processing, submission and evaluation of the requirements for accreditation [i.e. Compliance with regular and electronic submission of Summary List of Sales/Purchases/Importation ("SLS/SLP/SLI") and Alphalist of Employees and Payees ("Alphalist"), Existence of Account Receivables/Delinquent Accounts (AR/DA)].

The level of compliance with the regular submission of SLS/SLP/SLI and Alphalist shall no longer be covered by the certification of the Revenue District Officer or Head Revenue Executive Assistant, LT Programs and Compliance Group under ANNEX A and A-1 of RMO No. 1-2015 (Compliance Verification Sheet).

The RMO also adopts the policy that only applications for ICC/BCC where the taxpayer-applicant has filed an application for compromise settlement or abatement of penalties prior to the filing of the ICC/BCC Application shall be processed; otherwise, the ICC/BCC application shall be denied outright. Furthermore, the subsequent denial of applications for compromise/settlement/abatement of penalties by the Regional Evaluation Board/Large Taxpayers Service Evaluation Board/National Evaluation Board shall cause the immediate cancellation/revocation of the previously issued ICC/BCC.

The RMO likewise introduced the policy, procedure, and sanctions relative to the use of spurious certifications and documents pertinent to the application for ICC/BCC. It also specifies the compliance requirements for accredited importers or brokers which transferred business to a new address. In such case, a new certificate bearing the new address shall be issued after the submission of the pertinent requirements.

Revenue Memorandum Order No. 38-2016- Revocation of Revenue Memorandum Orders No. 24-2016 and 25-2016 Prescribing the Investigation of Parties in Transactions Involving the Transfer/Assignment/Sale of Properties

RMO 38-2016 revokes RMO 24-16 and 25-2016 which prescribed the audit or investigation of the applicants for Certificates Authorizing Registration ("CARs") and Tax Clearance ("TC") covering the sale/transfer/assignment of properties under RMO No. 15-03 and related issuances. The supposed audit was aimed to determine the applicant's capacity to hold and/or acquire properties.

The RMOs covered, among others, transactions which are subject to (i.) Final Capital Gains Tax ("CGT") on sale of real properties considered as capital assets; (ii.) CGT on sale, transfer, or assignment of stocks not traded in stock exchange; (iii.) Expanded withholding tax ("EWT") on sale of real properties considered as ordinary assets; (iv.) Donor's tax (v.) Estate tax; (vi.) other taxes including documentary stamp tax related to the sale/transfer of properties; and those covered by tax-free transfer under Section 40 of the Tax Code, as amended.

Revenue Memorandum Order 41-2016- Reiteration of the Revenue Memorandum Circular No. 39-15, "Updated BIR Citizen Charter, as Consolidated" and the Provisions of Revenue Memorandum Circular No. 80-12, "Strict Adherence to ARTA Provision on "Accessing Frontline Services" on Certificates Authorizing Registration (CAR) Issuance

RMO 41-16 reiterates the policy that CARs covering the (i.) sale of real property; (ii.) transfer or assignment of stocks not traded in the stock exchanges; and (iii.) transfers subject to Donors' Tax, Estate Tax, and other taxes, including Documentary Stamp Tax related to sale or transfer of properties, shall be issued **within five (5) days** from submission of complete documentary requirements. BIR officials and employees found to be in violation of the Citizens' Charter as well as Item (B) (b) (1) of RMC 80-2012 shall be subject to administrative and criminal penalties under the Anti-Red Tape Act of 2007.

Revenue Memorandum Order No (42-2016)- Prescribing Guidelines and Procedures in the Implementation of Republic Act No. 9505, Otherwise Known as the Personal Equity and Retirement Account (PERA) Act of 2008

This RMO prescribes the guidelines and procedures in the implementation of Republic Act (RA) No. 9505, otherwise known as the Personal Equity and Retirement Account (PERA) Act of 2008.

Under this RMO, the BIR's PERA Processing shall accept only Applications for Accreditation (BIR Form No. 1941) filed by pre-qualified PERA Administrator based on "Qualification Certificate" issued by the concerned Regulatory Authority (i.e., BSP or SEC).

Upon approval of the Application for Accreditation, the AITEID shall issue Certificate of Accreditation (BIR Form No. 2336) to the PERA Administrator which shall be valid from the date of issuance of the Certificate of Accreditation unless it is suspended or revoked for violation of any of the provisions of RA No. 9505, or for any of the grounds stated under Rule 4.D of the Rules and Regulations Implementing the PERA Act of 2008.

Contributions to PERA may come from employees and/or their employers or self-employed individuals, which shall not exceed Php 100,000.00 per calendar year, or Php 200,000.00 per calendar year if the contributor is an Overseas Filipino.

An employee or self-employed qualified Contributor shall be entitled to a five percent (5%) tax credit of the aggregate qualified PERA contributions made in a calendar year, which shall be allowed to be credited only against their Income Tax liabilities.

An Overseas Filipino Contributor with taxable income in the Philippines shall be entitled to a 5% tax credit to be claimed against any internal revenue tax liabilities, excluding his/her withholding tax liabilities as a withholding agent. However, Overseas Filipino Contributor without taxable income in the Philippines shall also be entitled to a 5% tax credit but which will eventually be forfeited in favor of the government.

A qualified employer's contribution to the employee's PERA shall not be entitled to 5% tax credit but may be claimed as a deduction from its gross income, but only to the extent of its contribution that would complete the maximum allowable PERA contribution. The qualified contribution shall likewise be exempt from Withholding Tax on compensation and Final Withholding Tax on fringe benefits.

All income earned from the investments and reinvestments of PERA assets in PERA investment products accredited by the concerned Regulatory Authority shall be exempt from Income Taxes but subject to other taxes applicable to the investment income (e.g., Percentage Tax, Value-Added Tax, Stock Transaction Tax and Documentary Stamp Tax).

In addition, the RMO lists the qualified PERA Distributions (QPD), which shall be excluded from the gross income of the Contributor and shall not be subject to Income Tax nor to Estate Tax in the hands of the heirs or beneficiaries of the Contributor.

Finally, the RMO provides for various reportorial and compliance requirement imposed primarily upon the designated PERA Administrator.

REVENUE MEMORANDUM ORDER NO. 44-2016- Amending Revenue Memorandum Order No. 20-2012, as amended (Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Revenue Code of 1997, as Amended.

This RMO amends RMO No. 20-2013 on Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the Tax Code, as Amended".

It affirms the Constitutional grant of tax exemption for a non-stock non-profit educational institution. Thus, for a non-stock, non-profit educational institutions to enjoy this tax exemption, there are two requisites, namely: (a) the school must be nonstock and non-profit; and (b) the income is actually, directly and exclusively used for educational purposes. There are no other conditions and limitations.

Tax Exemption Rulings or Certificates of Tax Exemption of non-stock, non-profit educational institutions shall remain valid and effective unless recalled for valid grounds. Such institutions are not required to renew or revalidate the Tax Exemption Rulings previously issued to them.

However, non-stock, non-profit educational institutions, however, with Tax Exemption Rulings or Certificates of Exemption issued prior to June 30, 2012 are required to apply for new Tax Exemption Rulings to update the BIR records and for purposes of better system monitoring.

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BIR-Issuances- Revenue Memorandum Circulars

Revenue Memorandum Circular No. 69-2016- Suspension of Effectivity of All Issuance Promulgated within the Period Covering June 1-30, 2016

The effectivity of all revenue issuances issued within the period of June 1 to 30, 2016 are suspended until further notice.

Revenue Memorandum Circular No. 70-2016- Suspension of Audit of the Bureau of Internal Revenue Effective July 1, 2016 and Submission of Inventory Pending Letters of Authority/Letter Notices as of June 30, 2016; and

All field audit and other field operations of the BIR relative to the examinations and verifications of taxpayer's books of accounts, records, and other transactions are ordered suspended until further notice.

No written orders to audit and/or investigate internal revenue tax liabilities shall be issued except on the following cases:

i. Investigation of cases prescribing on or before October 31, 2016;
ii. Processing and verification of Estate Tax returns, Donor's Tax returns, CGT returns, and withholding taxes returns on sale of real properties and shares of stocks, with the DST tax related thereto;

iii. Examination of taxpayers retiring from business;
iv. Audit of National Government Agencies, Local Government Units and Government Owned and Controlled Corporations, including subsidiaries and affiliates;
v. Other matters/concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue;

Revenue Memorandum Circular No. 75-2016- Clarification on Certain Issues Regarding Revenue Memorandum Circular No. 70-2016

The RMC clarified the earlier RMC 70-2016 and listed the activities, investigations or operations which are excepted from the suspension order. Under the RMC, all cases under investigation pertaining to Letters of Authority covering all internal revenue taxes for taxable year 2013 and prior years shall be covered by the exception from suspension of audit/investigation. For cases under LOAs covering specific tax type (e.g. VAT Investigation/audit), the reckoning of the prescriptive period shall be from the date prescribed by law for filing the return.

The processing of requests or applications for tax refund/TCC is included among the exceptions from the suspension of audit/investigation since a specific timeline to process said request/application is prescribed under existing revenue issuances (e.g. VAT refunds/TCC to be processed within 120 days from submission of complete documents).

Revenue Memorandum Circular 74-2016- Streamlining Requirements and Process in Issuing Tax Clearances under Executive Order No. 398

RMC 74-2016 simplifies and updates the requirements for application for BIR Tax Clearance, which are now limited to:

a. Accomplished and notarize application form with 2 pieces loose Documentary Stamp Tax;
b. Print-out certification fee paid thru BIR's EFPS, with payment confirmation;
c. Delinquency Verification issued by the concerned Large Taxpayer Service or National/Regional Offices with a validity of one month from the date of issue;

Revenue Memorandum Circular 80-2016- Lifting of Suspension of Effectivity of Certain Revenue Issuances Provided under Revenue Memorandum Circular No. 69-2016 dated July 1, 2016

This RMC lifts the suspension of certain issuances which were initially covered by RMC 69-2016.

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BIR RULINGS

BIR RULING No. 285-16; June 27, 2016

Facts:

Starlite Ferries, Inc. ("Starlite") is a domestic corporation, duly accredited by Maritime Industry Authority ("MARINA") to engage in domestic shipping business. Starlite is currently importing a Roll-On Roll-Off ("RORO") type passenger ferry name Starlite Saturn from builder, Kegoya Dock Co., Ltd. Of Japan.

The MARINA has approved the importation of the said vessel and that according to the Sworn Statement of Starlite's President, the subject vessel cannot be manufactured domestically in comparable quantity, technology and at a reasonable price.

Starlite now requests a confirmatory ruling that the importation of the vessel is exempt from VAT.

Issue: Whether the importation of the vessel Starlite Saturn qualified for VAT exemption.

Ruling:

Pursuant to Section 109 (1) (T) of the National Internal Revenue Code, as amended, the importation, among others, of a passenger or cargo vessel destined for transport operation shall be exempt from VAT. In relation thereto, Section 4.109-B (1) (t) of the Revenue Regulation ("RR") No. 16-2005, as amended by RR No. 15-2015, which implements the above provision, the exemption shall be subject to the requirements on restriction on vessel importation and the mandatory vessel retirement program of MARINA.

In view of the foregoing, the importation of the vessel, having been granted by MARINA the necessary clearances, and thus deemed compliant with the requirements on restriction on vessel importation, shall be exempt from VAT. The VAT exemption, however, shall be subject to the strict compliance of the conditions contained in the letter of approval issued by MARINA for the importation of the passenger vessel.

BIR RULING No. 304-16; June 27, 2016

Facts:

SM Development Corporation ("SMDC") is a domestic corporation registered with the Securities and Exchange Commission ("SEC"). It is also registered with the Board of Investment ("BOI") as a New Developer of Low-Cost Mass Housing Project (Berkeley Residences) on a Non-Pioneer status. As such, SMDC has been granted Income Tax Holiday ("ITH") for a period of four (4) years from December 2008 or actual start of commercial operations/selling, whichever is earlier but in no case earlier that the date of registration. SMDC's Berkeley Residences project is registered with the Housing and Land Use Regulatory Board ("HLURB").

Under specific terms and conditions of its BOI registration, the ITH of SMDC shall cover only 904 units of low-cost mass housing for the said Berkeley Project.

Issue: Whether SMDC is exempt from the payment of creditable withholding tax ("CWT") imposed under RR 2-98 on income payments receive during the ITH period with respect to registered activities.

Ruling:

Under Section 2.57.5 (B) (2) of RR2-98, as amended by RR6-01 implementing Section 57(B) of the Tax Code, as amended, the withholding tax prescribed in the said regulation shall not apply to income payments to persons enjoying the exemption from income tax provided by Republic Act 7916 and the Omnibus Investment Code of 1987.

Accordingly, income payments received by SMDC in connection with its housing project (on 904 low-cost mass housing units) is exempt from CWT under RR2-98 for a period of 4 years.

It must be emphasized, however, that the exemption from CWT covers only income directly attributable to revenues generated from the registered activity involving 904 low-cost mass housing units used solely for family home or dwelling purposes and not for commercial purposes such as

leasing, retail stores, offices, etc. Furthermore, such exemption shall not cover revenues from units with selling price exceeding 3,000,000.00. In the computation of ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity.

Moreover, the entitlement to ITH is not automatic as SMDC still has to comply with the Specific Terms and Conditions of their BOI registration.

Furthermore, BOI registered enterprises enjoy no tax exemption/privileges other than those granted under Executive Order No. 226. Thus, SMDC- Berkeley Project will remain subject to Value-Added Tax and Documentary Stamp Tax on its sales of house and lot units pursuant to Section 106 and 196 of the Tax Code, as amended.

SMDC shall be constituted as a withholding agent for the government if it acts as employer and any of its employees receive compensation income subject to withholding tax, or if makes payments to individuals or corporations subject to the withholding taxes at source.

BIR Ruling No. 256-16

Facts:

Spouses Adriano and Marlyn Manalo, are the registered owners of a two parcels of land in Guinticgan, Carles, Iloilo. Spouses Manalo executed a two Deed of Absolute Sale in which they transferred the above properties in favor of National Housing Authority (NHA).

The subject lots have been identified and certified for development into a residential project under the NHA's Yolanda Permanent Housing Program intended for families affected by Typhoon Yolanda and qualified for housing assistance under Republic Act No. 7279 (Urban Development and Housing Act). Relative thereto, the NHA issued a Notice of Award to R.D. Policarpio & Co., Inc./TGV Builders, Inc.- Joint Venture for the procurement of Fully Developed Lots and Completed Housing Units under NHA's Yolanda Permanent Housing Program located at Guinticgan Carles, Iloilo.

To give effect to the Notice of Award, a Contract for Procurement of Fully Developed Lots and Completed Housing Units (1,000 Units) was executed between NHA and R.D. Policarpio & Co., Inc./TGV Builders, Inc.- Joint Venture, whereby the latter committed to deliver 1,000 units.

The company requested for issuance of Certificate of Tax Exemption on the Procurement of Fully Developed and Completed Housing Units pursuant to Republic Act 7279.

Issue: What are the tax implications of the above contracts between NHA and the landowner and between NHA and R.D. Policarpio & Co., Inc./TGV Builders, Inc.- Joint Venture.

Ruling:

Sale by landowner to NHA

Pursuant to Section 19 and 20 of Republic Act No. 7279, the landowner who sells his/her property for use in socialized housing project is exempt from the payment of capital gains tax ("CGT") . As such, the sale by Spouses Manalo to the NHA is exempt from CGT.

The exemption from documentary stamp tax ("DST") of NHA in connection with any of its socialized housing project extends to the other party (either seller or buyer) that deals or transact with the NHA. Consequently, since NHA is a party to the sale, no DST shall be due on the same.

Upon application for exemption, a lien on titles of the lands shall be annotated by the Register of Deeds having jurisdiction over the properties, to the effect that the same is to be applied or is being applied to socialized housing project pursuant to RA7279.

Transaction between NHA and R.D. Policarpio & Co., Inc./TGV Builders, Inc.- Joint Venture

Considering that R.D. Policarpio & Co., Inc./TGV Builders, Inc.- Joint Venture is a project contractor whose services have been engaged by the NHA to undertake construction of 1,000 housing units with its necessary construction components, the income directly realized by the Joint Venture from the construction of 1,000 housing with its necessary component shall be exempt from project-related income taxes.

However, the purchases of goods/articles by the Joint Venture shall be subject to VAT, even if the said purchases are to be used for the socialized housing project, since VAT is an indirect tax which can be passed on by the seller of the goods or services.

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CTA en Banc Decisions

Commissioner of Internal Revenue vs. PMFTC, Inc.
CTA EB No. 1385; July 11, 2016

Facts:

PMFTC, Inc. entered into a Trademark License Agreement ("TLA") with Philip Morris Global Brands, Inc. ("PMGP"), whereby PMFTC was granted the exclusive right to use various trademarks and other intellectual property rights of PMGP within the Philippines.

From August 15, 2011 to November 14, 2012, PMFTC withheld and remitted to the BIR income tax in the aggregate amount of PHP838,645,970.45 representing 30% withholding tax due on royalty payment under the TLA.

On July 31, 2013, PMFTC (as withholding agent of PMGP), filed with the BIR an administrative claim for refund or issuance of a tax credit certificate (TCC) in the total amount of PHP559,097,313.63, corresponding to the excess withholding tax remittances on royalty payments based on Art 13(2)(b)(iii) of the RP-US Tax Treaty in relation to Article 12(2)(b) of the RP-China and the RP-UAE Tax treaties, which effectively provides a preferential rate of 10% on royalties remitted by a Philippine corporation to resident of the US.

In opposing the claim for refund, the CIR argued, among others, that while PMFTC filed the administrative and judicial claims for refund within two (2) years from date of payment, the CIR, however, was not afforded the opportunity to evaluate and review the claim because the judicial claim was filed exactly twelve (12) days after the filing of the administrative claim. Thus it was highly improbably for the CIR to review the claim in 12 days.

The CIR also argued that PMFTC failed to file any Tax Treaty Relief Application ("TTRA") as provided under Revenue Memorandum Order No. 72-10 before the occurrence of the first taxable event. Accordingly, the preferential rates under the treaties cannot be applied.

Issue: Whether the grant of refund is proper; whether the CTA has jurisdiction over the claim; and, whether the failure to file TTRA warrant denial of the claim for refund.

Ruling:

The CTA en banc upheld the grant of the tax refund in favor of PMFTC.

Section 204 (c) of the Tax Code, as amended, provides that no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the CIR a claim for credit or refund within two years after payment of the tax or penalty.

On the other hand, Section 229 of the Tax Code, as amended, also provides that no suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax until a claim for refund or credit has been duly filed with the CIR. In any case, no such or proceeding shall be filed after the expiration of two years from the date of the payment of tax or penalty regardless of any supervening cause that may arise after payment.

From the foregoing, both the administrative and judicial claims for refund must be filed within (two) years counted from the date of payment of tax, regardless of any supervening cause that may arise after payment. The taxpayer cannot be faulted for taking advantage of the full two-year perid in filing his claim as long as both his administrative and judicial claims are filed within the said period.

As for the failure to file TTRA application, the CTA en banc ruled that based on Deutche Bank AG Manila Branch vs. Commissioner of Internal Revenue (GR No. 188550; August 28, 2013), the failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief should not operate to divest entitlement to tax treaty benefits as it would constitute a violation of the duty required by good faith in complying with the tax treaty and that it would impair the value of the tax treaty.

The CTA en banc likewise reiterated that the underlying principle of prior application for tax treaty relief with the BIR becomes moot in refund cases, such as the present Petition, where the very basis of the claim is erroneous or excessive payment arising from non-availment of a tax-treaty relief at the first instance (in such case the prior application requirement becomes illogical).

Stateland, Inc. vs. Commissioner of Internal Revenue
CTA EB Case No. 1148; July 4, 2016

Facts:
Stateland, Inc. ("Stateland") had accumulated Creditable Withholding Taxes ("CWT") in the total amount of PhP62,803,649, composed of taxes paid in 2008 and carried over from prior taxable years.

On July 21, 2010, Stateland filed an administrative claim for refund for a portion of its excess and utilized CWT for the year ending December 31, 2009 in the amount of PhP11,570,181.

The CIR, however, failed to act on the request prompting Petitioner to elevate the matter to the Court in Division, which denied the claim for refund. According to the CTA in Division, Stateland failed to satisfy the requisite that the income from which the subject taxes (subject of refund) were withheld were included in the Stateland's Income Tax Return ("ITR") for calendar year 2009. The CTA in division then ruled that Stateland failed to account for the discrepancy in the amount of PhP129,928,217.22

after comparison of Stateland's income payments indicated in the Certificate of Tax Withheld with those appearing in 2009 ITR.

Issue: Whether or not tax refund is proper. Whether or not may be allowed to carry-over the CWT subject of the claim for refund.

Ruling:

Affirming the decision of the CTA in division, the CTA en banc ruled that Stateland failed to clearly prove that the income payments subjected to withholding tax were declared as part of its income. The Court cited Stateland's failure to reconcile the discrepancy between its income payments indicated in the Certificate of Tax Withheld with those appearing in 2009 ITR. The Court reiterated the rule that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding.

However, the CTA en banc ruled that all is not lost for Stateland, citing a similar case where a claim for refund of CWT was denied, but the Supreme Court allowed the same to be carried over. The amount being claimed as a refund would remain in the account of taxpayer until utilized in succeeding taxable years, as provided under Section 76 of the Tax Code, as amended. (CIR vs. Bank of the Philippine Islands, GR No. 178490; July 7, 2009).

Manila Peninsula Hotel, Inc. vs. Commissioner of Internal Revenue
CTA EB No. 1408; July 12, 1987

Facts: Manila Peninsula Hotel, Inc. ("Manila Peninsula") is a domestic corporation engaged in the business of hotel administration and providing general hostelry services. Delta Air Lines, Inc. ("Delta Air"), on the other hand, a foreign corporation with a License to Transact Business on the Philippines, allowing it to establish a branch office in the Philippines to engage in international air transport services.

Manila Peninsula provides accommodations and food and beverages services to Delta Air's pilots and cabin crew. The cost of the services would be directly charged upon Delta Air (and considered as its business expense.)

For taxable year 2010, Manila Peninsula paid the BIR the amount of PhP74,764,313.49 VAT, with quarterly VAT returns.

On June 19, 2012, Manila Peninsula filed an administrative claim for refund for alleged erroneously paid or illegally collected VAT for taxable year 2010 amounting to PhP3,807,771.77 consisting of its 12% VAT payments on its sales to Delta Air. The Company took the position that the sales to Delta Air should be considered as zero-rated; hence it is qualified to claim the refund.

Issues: a.) Whether the sales by Manila Peninsula to Delta Air subject to zero percent (0%) VAT;
b.) Whether Manila Peninsula is entitled to refund the alleged erroneously paid or illegally collected VAT;

Ruling:

a. The sales by Manila Peninsula to Delta Air is subject to zero percent VAT provided that it complies with BIR Ruling 99-2011 dated April 6, 2011 and Revenue Memorandum Circular

("RMC")No. 46-2008, as valid interpretations of Section 108(B)(4) of the Tax Code, as amended, in relation to Section 4.108-5(b)(4) of Revenue Regulation ("RR") 16-2005 and RMC No. 031-11.

Citing the earlier case of Delta Air Lines, Inc. vs. Hon. Sec. Cesar V. Purisima, the CTA en banc reiterated that the services performed in the Philippines by a VAT-registered person to a person engaged in international shipping or in air transport operations, including leases of property for use thereof are generally subject to zero-percent (0%) VAT. However, RR No. 16-2005, as amended by RR No. 4-2007, provides that when the services performed in the Philippines by a VAT registered person are rendered to common carriers by air or sea relative to their transport of passengers, goods and cargoes from one place in the Philippines to another place in the Philippines, the same shall be subject to twelve percent (12%) starting February 1, 2006.

In summary, for Manila Peninsula's sale of services to Delta Air to qualify for zero-rating, it must comply not only with the requisites provided under Section 108 (B)(4) of the Tax Code, as amended. Manila Peninsula must also prove that (1.) the services pertain to or must be attributable to the transport of goods and passengers; (2.) the transport of goods and passengers must emanate from a port in the Philippines; (3.) the transport of goods and passengers must be directly to a foreign port; and (4.) the common international air transport carrier must not dock or stop at any port in the Philippines.

b. In the present case, however, Manila Peninsula is not entitled to a refund since it failed to satisfy the requisites for its transactions to qualify for zero-rating.

The sales of room accommodations and food and beverages do not entirely pertain to or are not attributable to Delta Air's transport of goods and passengers. This is based on the reading of Manila Peninsula's Agreement with Delta Air where Manila Peninsula is obliged to render services not only to Delta Air's flight crew, but also to Delta Air's employees on company basis, non-crew employees of Delta Air's subsidiary or affiliates, and contractors of any Delta Air's subsidiary or affiliate engaged in work for these entities.

From the foregoing, the Court found that Manila Peninsula's service to Delta Air does not pertain to or is not attributable to Delta Air's transport of passengers or goods.

Furthermore, Manila Peninsula failed to present evidence to prove the following requisites: (1.) the transport of goods and passengers must emanate from a port in the Philippines; (2.) the transport of goods and passengers must be directly to a foreign port; and (3.) the common international air transport carrier must not dock or stop at any port in the Philippines.